IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 2324 OF 2006

MRS. RASHMI SURESH GOPI .. PETITIONER

Versus

GOPAL GHYNSHAMDAS CHHABRIA & ORS. RESPONDENTS

Mr. Y.V. Divekar i/b M/s. Divekar & Co. for petitioner

Mr. H.R. Desai for R-1

CORAM:-SMT. RANJANA DESAI, J.

DATED:- 8/11/2006

P.C.

. In this writ petition filed under Article 227 of the Constitution of India, the petitioner has challenged judgment and order dated 5/10/06 rendered by the Additional Sessions Judge, Mumbai, rejecting the revision application filed by the petitioner. The revision application was filed challenging the order dated 4/5/06 passed by the Metropolitan Magistrate's 33rd Court, Ballard Pier, Mumbai in Case No. 6374/SS/05. By this order the learned Magistrate has allowed the application

filed by the complainant praying inter alia that name of the petitioner be added as proprietress of accused 1 M/s. Exotech India.

2. I have heard Mr. Divekar, learned counsel for the petitioner. He submitted that the order passed by the learned Magistrate dated 4/5/06 is clearly illegal. He submitted that such an order could only have been passed under Section 319 of the Code of Criminal Procedure ("the Code" for short) and under Section 319 of the Code the court can add a person as an accused, if in the case of any inquiry into or trial of an offence, it appears from the evidence that the said person has committed any offence for which he can be tried together with the accused. The learned counsel urged that inasmuch as in this case evidence is not yet led the learned Magistrate could not have passed such an order.

3. I find no force in this submission. There is no indication in the order passed by the learned Magistrate that the petitioner has been added as an accused. The learned Magistrate has merely granted application filed by the 1st respondent and added the petitioner’s name as wife of Mr. Gopi as proprietress of accused 1. Therefore, the question

of exercising powers under Section 319 of the Code does not arise. This argument is misconceived and is rejected. I find no merit in this petition and it is, therefore, rejected.

4. However, it is clarified that the learned Magistrate seized of the case shall deal with it uninfluenced by any observations made by the learned Sessions Judge in his order dated 4/5/06.

JUDGE.